

803 CMR 3.00: ACCESS PROCEDURES (CERTIFICATION)

Section

- 3.01: General Requirements
- 3.02: Criminal Justice Agencies: Eligibility for Access
- 3.03: Non Criminal Justice Agencies: Eligibility for Access
- 3.04: Public Interest: Eligibility for Access
- 3.05: Procedures for agencies certified under M.G.L. c. 6, §§ 172(b) or 172(c) to follow in conducting CORI checks
- 3.06: Public access to conviction data on certain individuals
- 3.07: Computer Terminal Access to CORI
- 3.08: Limitations on Access to CORI
- 3.09: Access by other than Personal Identifying Information
- 3.10: Listing of Dissemination of CORI
- 3.11: Listing of Certified Agencies
- 3.12: Fees
- 3.13: Electronic Mechanism for Access to CORI
- 3.14: Revocation and Modification Procedures
- 3.15: Severability

3.01: General Requirements

- (1) Any individual or agency requesting certification for access to CORI under the provisions of M.G.L. c. 6, §§ 172(a), (b), or (c), shall apply in the manner prescribed by the CHSB. .
- (2) Within a reasonable time of receipt by the CHSB of an application under M.G.L. c. 6, § 172, and the collection of sufficient data, Legal Counsel shall prepare written recommendation pertaining to each application with reasons for approval or denial of certification.
- (3) The members of the CHSB shall meet and consider the applications for certification and recommendations of Legal Counsel on each. In the case of applications filed pursuant to M.G.L. c. 6, §§ 172(a) and 172(b) a majority vote of the present and voting members shall be required for certification. For applications filed pursuant to M.G.L. c. 6, § 172(c) a 2/3 vote of the present and voting members shall be required for certification.
- (4) No CORI shall be disseminated to any such agency or individual prior to certification by CHSB.
- (5) Upon certification, access to CORI at a certified agency is limited to individuals who have filed individual agreements of non-disclosure with the CHSB. Such individuals shall be designated to request, receive, and review CORI on behalf of the agency. The CHSB in its discretion may deny access to CORI by individuals at a certified agency.

(6) Certifications issued pursuant to M.G.L. c. 6, §§ 172(b) and 172(c) shall be renewed every two years.

3.02: Criminal Justice Agencies: Eligibility for Access

(1) In order to obtain certification as a criminal justice agency pursuant to M.G.L. c. 6, § 172(a), the agency requesting such certification must show that it conforms to the definition of "Criminal Justice Agency" which appears in M.G.L. c. 6, § 167 and 803 CMR 2.03.

(2) Only those officials and employees of criminal justice agencies as determined by the administrative heads of such agencies to require CORI for the actual performance of their criminal justice duties shall have access to CORI. Such administrative heads shall maintain for inspection by the CHSB, a list of such authorized employees by position, title, or name.

(3) Consultants and contractors to criminal justice agencies shall complete a written agreement of non-disclosure, as provided by and approved by the CHSB, to use CORI only as permitted by M.G.L. c. 6, §§ 167 through 178 and 803 CMR 3.00. Such Agreements of Non-Disclosure shall be held by the criminal justice agency and the CHSB.

(4) A certified criminal justice agency which is a subunit of a non-criminal justice agency shall not disseminate CORI, directly to or through any intermediary, to any uncertified official, employee, consultant or contractor of the non-criminal justice agency of which it is a part.

3.03: Non-Criminal Justice Agencies: Eligibility for Access

(1) In order to obtain certification pursuant to M.G.L. c. 6, § 172(b), a non-criminal justice agency must show that it is required to have access to CORI by statute. "Required to have access by statute" means that there is a specific statutory directive that such individual or agency:

- (a) Have access to CORI, or;
- (b) Must use CORI in the exercise of its decision making process.

The following shall not constitute sufficient justification for certification under 803 CMR 3.03:

- 1. An administrative or executive directive, in the absence of specific statutory language;
- 2. A statutory requirement to consider good character, moral character, trustworthiness or similar subjective characteristics.

(2) Consultants and contractors to non-criminal justice agencies shall complete a written agreement of non-disclosure, as provided by and approved by CHSB, to use CORI only as permitted by M.G.L. c. 6, §§ 167 through 178 and 803 CMR 3.00. Such Agreements of Non-Disclosure shall be held by the criminal justice agency and the CHSB.

(3) A certified non-criminal justice agency which is a subunit of an uncertified non-criminal justice agency shall not disseminate CORI, directly or through any intermediary, to any uncertified official, employee, consultant or contractor of the non-criminal justice agency of which it is a part.

3.04: Public Interest: Eligibility for Access

(1) In order to obtain certification pursuant to M.G.L. c. 6, § 172(c), an agency, individual or corporation must offer evidence that the public interest in disseminating the requested CORI outweighs the personal privacy interests of the subjects upon which access is sought. Two-thirds of the present and voting members of the CHSB are required both for certification and for the extent of access to be allowed.

(2) Persons who are victims of crime, witnesses to crime, and family members of homicide victims, as defined by M.G.L. c. 258B, shall be certified by the Board upon their application to receive:

- (a) CORI information as it relates to the offense in which said victim/witness is involved;
- (b) Other information, including but not limited to, evaluative information, which in the agency's discretion is reasonably necessary for the security and well being of said victim/witness.

3.05 Procedures for agencies certified under M.G.L. c. 6, §§ 172(b) or 172(c) to follow in conducting CORI checks

(1) An agency certified pursuant to M.G.L. c. 6, §§ 172(b) or 172(c) shall obtain information required by the CHSB on the CORI request form including but not limited to full name, date of birth, mother's maiden name, place of birth, sex, former addresses, height, weight, eye color and may request the applicant's social security number, in order to assure that the distribution of CORI relates to the individual for whom the request has been made.

(2) In order to obtain a CORI check on an applicant, the agency shall:

- (a) confirm that it is currently certified to perform a CORI check on the current or otherwise qualified applicant under its grant of certification from the CHSB;
- (b) use the form prescribed by the CHSB;
- (c) obtain the signature of the individual upon whom the CORI check is being performed, except as otherwise authorized by law;
- (d) verify the identity of the applicant upon whom the CORI check is being requested with at least one form of government issued photographic identification;
- (e) maintain a copy of the CORI request form.

3.06 Public Access to Conviction Data on Certain Individuals

(1) Pursuant to M.G.L. c. 6, § 172, the public may have access, upon written request, to conviction data that is maintained on the automated criminal history file of the Criminal History Systems Board pertaining to certain individuals that meet the following criteria:

- (a) that the person has been convicted of a crime punishable by a term of five years or more, regardless of the sentence imposed; or
- (b) that the person has been convicted of any crime and sentenced to any term of incarceration AND at the time of the request:
 - 1. the person is currently incarcerated; or sentenced to and actively on probation supervision; or currently under parole supervision; or,
 - 2. having been convicted of a misdemeanor, has been released from all custody and supervision for not more than one year; or,
 - 3. having been convicted of a felony, has been released from all custody or supervision for not more than two years; or,
 - 4. having been sentenced to the custody of the Department of Correction, has finally been discharged therefrom, either having been denied a release on parole or having been returned to custody as a parole violator, for not more than three years.
- (2) Said requests for publicly accessible conviction data shall be made only to the Criminal History Systems Board in the following manner:
 - (a) in writing, including the name, date of birth of the person subject of the query; social security number is requested but not required, additional data may be required to positively identify the individual;
 - (b) by mail, postage prepaid;
 - (c) accompanied by a fee of \$30.00 for each name to be queried;
 - (d) all responses will be returned by mail to the requestor;
 - (e) the CHSB reserves the right to deny a record request based upon insufficient identifying information.

3.07: Computer Terminal Access to CORI

Computer terminal access to CORI shall be limited to certified criminal justice agencies, unless such access is otherwise authorized by the CHSB. Computer terminal access to CORI, or to any other data contained on CJIS, shall be used by law enforcement or criminal justice personnel and otherwise authorized persons only for a criminal justice purpose in the performance of their official duties and responsibilities. Such CJIS data shall include, but not be limited to, CORI, juvenile records, and any and all information as provided via the Registry of Motor Vehicles, the National Law Enforcement Telecommunications System, the Interstate Identification Index, the Court Activity Record Information file (including the civil restraining order file), Corrections information, and Parole information. All such personnel or authorized persons shall be subject to a criminal record background check and will sign an agreement of non-disclosure on forms provided by the Criminal History Systems Board.

3.08: Limitations on Access to CORI

The extent of access to CORI, or to any other data contained on the CJIS system as indicated in 803 CMR 3.06, shall be limited to that necessary for the actual performance of the criminal justice duties of criminal justice agencies under M.G.L. c. 6, § 172(a), to that necessary for the actual performance of the statutory duties of agencies and individuals granted access under M.G.L. c. 6, § 172(b), and to that necessary for the actual performance of the actions or duties sustaining the public interest as to agencies or individuals granted access under M.G.L. c. 6, § 172(c).

3.09: Access by Other Than Personal Identifying Information

Except for approved research program or upon written authorization of the CHSB and the head of the agency whose CORI is sought, access to and dissemination of CORI shall be limited to inquiries based on name, fingerprints or other personal identifying characteristics.

3.10: Listing of Dissemination of CORI

Each agency or individual certified by the CHSB shall maintain a listing of CORI disseminated and the agencies or individuals to whom it has disseminated each item of CORI. The listing shall include the type of CORI disseminated, to whom it was disseminated, by whom it was disseminated, and the date. The listing shall be maintained for at least one year from the date of dissemination. Such listing shall be made available for audit or inspection by the CHSB.

3.11 Listing of Certified Agencies

The CHSB shall maintain a list of all agencies certified under M.G.L. c. 6, §§ 172(a), (b), (c) and 173. A copy of such list shall be provided to any individual or agency on request.

3.12: Fees

(1) A fee of \$30.00 shall be paid to the Board for each request for the publicly accessible record of criminal convictions of an individual pursuant to the provisions of M.G.L. c. 6, § 172, paras. 6 and 7.

(2) A fee of \$15.00 shall be paid to the Board for each request for CORI data of an individual pursuant to any certification provided by the Board to a non-governmental agency pursuant to the provisions of M.G.L. c. 6, § 172, paragraph 1, clause (b) and clause (c)..

(3) A fee of \$25.00 shall be paid to the Board for each request for CORI from an individual seeking to obtain CORI pertaining to himself, including requests as made by authorized third parties; provided, however, that if a person shall be found indigent, as defined in M.G.L. c. 261, § 27A, the Board shall not impose a fee.

(4) No fee shall be assessed by the Board for any request for CORI data as presented by the following:

- (a) a victim, witness, or family member of a homicide victim, all as defined by M.G.L. c. 258B and certified pursuant to M.G.L. c. 6, § 178A;
- (b) a governmental agency;
- (c) such others as the board shall exempt upon application thereto and where the Board determines such exemption shall serve the public interest.

3.13: Electronic **Mechanism for Access** to CORI

The CHSB in its discretion may authorize access to CORI through its secure website to certified agencies. Where a certified agency is granted electronic access to CORI the following terms and conditions shall apply:

(1) Each agency user of the CHSB website to submit an individual agreement of non-disclosure.

- (a) The CHSB reserves the right to deny an individual's access to CORI;
- (b) Upon approval the user is issued a password to access the system. It is the responsibility of each user to keep his/her password secure and confidential.

(2) The use, storage, and retention of CORI shall be kept in accordance with the CORI audit guidelines.

(3) No part of the CHSB web site, or any information contained therein, may be reproduced, republished, redistributed, or transmitted, in whole or in part in any form or by any means, electronic or mechanical, in any information storage or retrieval system, unless in accordance with M.G.L. c. 6, §§ 167-178 inclusive or with express written permission from the Executive Director of the CHSB.

(4) Enforcement of the terms and conditions, or the use of any information received through the CHSB web site including but not limited to CORI, will be governed and construed by the laws of the Commonwealth of Massachusetts.

(5) The CHSB reserves the right to audit agencies in order to ensure compliance with policy, regulatory, and statutory requirements.

(6) The CHSB may require agencies to process CORI requests electronically through its secure website.

(7) The CHSB reserves the right to revoke or deny electronic access to CORI.

3.14: Revocation and Modification Procedures

The CHSB may revoke or modify the conditions of a certification at any time as follows:

- (1) by a majority vote of the present and voting members, modify the conditions of the certification issued pursuant to M.G.L. c. 6 § 172(a);
- (2) by a majority vote of the present and voting members, revoke or modify the conditions of the certification issued pursuant to M.G.L. c. 6, § 172(b); or
- (3) by a two thirds majority vote of present and voting members, revoke or modify the conditions of the certification previously issued pursuant to M.G.L. c. 6, § 172(c).

3.15: Severability

If any provision of 803 CMR 3.00 or the application thereof is held to be invalid, such invalidity shall not affect other provisions or the application of any other part of 803 CMR 3.00 not specifically held invalid, and to this end the provisions of 803 CMR 3.00 and various applications thereof are declared to be severable.

REGULATORY AUTHORITY

803 CMR 3.00: M.G.L. c. 6, §§ 168, 172, 172B, 175. Chapter 149 of the Acts of 2004.